

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6260

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CORY NEWMAN,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. G. Ross Anderson, Jr., Senior District Judge. (6:04-cr-01127-GRA-8)

Submitted: June 3, 2011

Decided: June 21, 2011

Before MOTZ, SHEDD, and DAVIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Cory Newman, Appellant Pro Se. Carrie Ann Fisher, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cory Newman appeals the district court's order denying his 18 U.S.C. § 3582(c)(2) (2006) motion for a reduction of sentence. We review an order granting or denying a § 3582(c)(2) motion for abuse of discretion. United States v. Munn, 595 F.3d 183, 186 (4th Cir. 2010). A district court abuses its discretion if it fails or refuses to exercise discretion, or if it relies on an erroneous factual or legal premise. DIRECTV, Inc. v. Rawlins, 523 F.3d 318, 323 (4th Cir. 2008).

Under § 3582(c)(2), the district court may modify the term of imprisonment "of a defendant who has been sentenced . . . based on a sentencing range that has subsequently been lowered," if the amendment is listed in the Guidelines as retroactively applicable. 18 U.S.C. § 3582(c)(2); see also U.S. Sentencing Guidelines Manual § 1B1.10(a)(2)(A), (c), p.s. (2010). Newman seeks a reduction pursuant to Amendment 742. USSG App'x C Supp., Amend. 742. This Amendment is not among those listed in USSG § 1B1.10(c), p.s., and is therefore not retroactively applicable. See United States v. Dunphy, 551 F.3d 247, 249 n.2 (4th Cir. 2009).

Accordingly, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials

before the court and argument would not aid the decisional process.

AFFIRMED